IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 256 OF 2005

Anuksh Mahadeo Kale & Anr. ...Petitioners

Versus

The Returning Officer & Ors. ... Respondents

Mr. P.B. Shaligram for the Petitioners
Mr. Y.D. Mulani, Assistant Government Pleader, for the State
Mr. S.M. Sabrad for Respondent No. 3.

CORAM: DALVEER BHANDARI, C.J., &
S.A. BOBDE, J.
DATE: APRIL 25, 2005.

P.C.:-

1. This petition has been filed for issuing direction to the Chief Election Commissioner to take action against respondent No. 3, Uday Ramesh Patil, and other concerned officials.

2. According to the petitioners, respondent No. 3 was born on 23rd May, 1982, and at the time of contesting the election, he had not completed 25 years of age, which is the minimum age for contesting the election,

according to Article 173(b) of the Constitution.

3. It may be pertinent to mention that neither the petitioners were candidates nor respondent No. 3 was elected.

4. In reply to this petition, it is mentioned that this petition suffers from unexplained delay and laches, inasmuch as the nomination form was accepted by respondent No. 2 on 23rd September, 2004 and if at all the petitioners had any grievance, they ought to have immediately approached this Court. The petitioners, at no point of time, had taken any objection to the nomination form filed by respondent No. 3.

5. It may also be pertinent to mention that at the time of nomination of respondent No. 3, one Madhukar Kore took objection to his nomination. The Election Commission and the Returning Officer, after considering the objection, validly accepted respondent No.3' s nomination form vide order dated 23rd September, 2004. After having accepted his nomination form, the said objector has not challenged the said order and it attained finality. Now, after a lapse of about 5 months, this petition is filed and that, too, by the persons who had

not objected to his nomination form.

6. It is also mentioned that respondent No. 3 lost election from the constituency in question and Shri Sushil Kumar Shinde was elected and when he was appointed as Governor of Andhra Pradesh, the seat fell vacant and, therefore, fresh election took place on 24th January, 2005 and results were declared on 28th January, 2005. These subsequent developments have not been mentioned in the writ petition.

7. It seems that this petition has been filed with an oblique motive. In any event, highly disputed questions of fact cannot be determined in the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8. On consideration of the totality of the facts and circumstances, we do not deem it a fit case for interference in our extra-ordinary jurisdiction under Article 226 of the Constitution. This petition is consequently rejected.

CHIEF JUSTICE

S.A. BOBDE, J.